

E-Filed On 11/30/06

MOT
SUSAN WILLIAMS SCANN, ESQ.
Nevada Bar No. 000776
PAUL R. CONNAGHAN, ESQ.
Nevada Bar No. 003229
DEANER, DEANER, SCANN, MALAN & LARSEN
720 South Fourth Street, Suite #300
Las Vegas, Nevada 89101 (702) 382-6911
Attorney for Parties In Interest
COPPER SAGE COMMERCE CENTER LLC

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re:
USA COMMERCIAL MORTGAGE
COMPANY,

Debtor

Case No. BK-S-06-10725 LBR
Case No. BK-S-06-10726 LBR
Case No. BK-S-06-10727 LBR
Case No. BK-S-06-10728 LBR
Case No. BK-S-06-10729 LBR

In re:
USA CAPITAL REALTY ADVISORS, LLC.

Debtor

Chapter 11

In re:
USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC.

Debtor

Jointly Administered Under
Case No. BK-S-06-10725 LBR

Date of Hearing: OST Requested
Time of Hearing: OST Requested

In re:
USA CAPITAL FIRST TRUST
DEED FUND, LLC.

Debtor

Affects:
☒ USA Commercial Mortgage Company
UUSA Capital Diversified Trust Deed Fund, LLC
UUSA Realty Advisors, LLC
OUSA Capital First Trust Deed Fund, LLC
OUSA Securities, LLC
☐ All Debtors

In re:
USA SECURITIES, LLC.

Debtor

**MOTION TO TEMPORARILY ALLOW CLAIM OF COPPER SAGE
COMMERCE CENTER, LLC FOR VOTING PURPOSES**

COMES NOW, the Movant, COPPER SAGE COMMERCE CENTER, LLC,

1 ("Copper Sage")by and through its attorney, SUSAN WILLIAMS SCANN, ESQ. of the law
2 firm of DEANER, DEANER, SCANN, MALAN & LARSEN, and moves this Court
3 pursuant to Federal Rule FRBP 3018(a) to temporarily allow its claim for the purpose of
4 voting to accept or reject the Debtor's proposed Plan. The Debtor has not formally objected
5 to Copper Sage's Proof of Claim. However, Copper Sage did not receive a ballot with the
6 copy of the Disclosure Statement, accordingly, based on the Notice, Copper Sage is required
7 to file this Motion.

8 FRBP 3018(A) provides as follows:

9 Notwithstanding objection to a claim or interest, the court after
10 notice and **hearing** may temporarily allow the claim or interest
11 in an amount which the court deems proper for the purposes of
12 accepting or rejecting the plan.

13 Copper Sage has filed a Proof of Claim and Amended Proof of Claim for damages in the
14 estimated amount of \$3,500,000.00 for Breach of Contract, Intentional Misrepresentation and
15 the other theories. Copies of the Proof of Claim and the Amended Proof of Claim are
16 attached hereto as Exhibit "1" The only exhibit attached is the List of Exhibits. The purpose
17 for this is to reduce the bulk of this Motion. USA Commercial Mortgage ("USACM") is a
18 Lender and has breached the Construction Loan Agreement dated March 1,2006 to fully
19 fund the \$11,3000,000.00 budget for the project. This fact is undisputed. The elements of a
20 claim for Breach of Contract are material failure of a duty under an agreement. Bernard v.
21 Rockwell Development Company, 103 Nev. 132,135,734 P.2d 1238 (1987).

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1 Copper Sage requests that this Court grant its Motion to temporarily allow its claim in
2 the amount of \$3,500,000.00 for voting purposes on the Plan.

3 DATED this 30th day of November, 2006
4

5 Respectfully Submitted,
6 DEANER, DEANER, SCANN,
MALAN and LARSEN

7
8 By:


9 SUSAN WILLIAMS SCANN, ESQ.
Nevada Bar No. 000776
10 PAUL R. CONNAGHAN, ESQ.
Nevada Bar No. 003229
720 South Fourth Street, Suite 300
11 Las Vegas, Nevada 89101
Attorneys for COPPER SAGE
12 COMMERCE CENTER, LLC
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CERTIFICATE OF MAILING

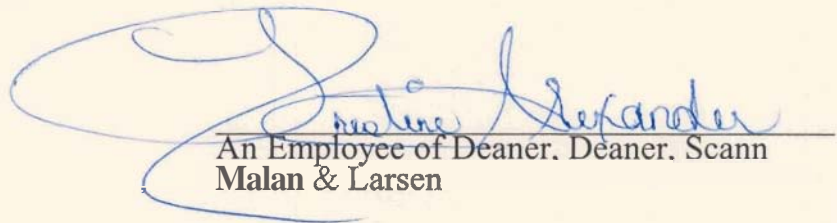
I hereby certify that service of the above and foregoing MOTION TO TEMPORARILY ALLOW CLAIM OF COPPER SAGE COMMERCE CENTER, LLC FOR VOTING PURPOSES was made this 30th day of November, 2006, by depositing a copy of the same in the United States mail in Las Vegas, Nevada, postage-prepaid, addressed to the following:

DEBTOR AND COUNSEL

Annette W. Jarvis
Ray Quinney & Nebeker P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385

Lenard E. Schwartzer
Jeanette E. McPherson
Schwartzer & McPherson Law Firm
2850 South Jones Boulevard, Suite 1
Las Vegas, Nevada 89146-5308

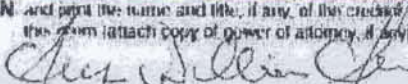
USA Commercial Mortgage
USA Capital Realty Advisors, LLC
USA Capital Diversified Trust Deed Fund, LLC
USA Capital First Trust Deed Fund, LLC
USA Securities, LLC
Thomas J. Allison
4484 South Pecos Road
Las Vegas, NV 89121



An Employee of Deaner, Deaner, Scann
Malan & Larsen

EXHIBIT —

AMENDED

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEVADA		PROOF OF CLAIM	
Name of Debtor: USA Commercial Mortgage Company		Case Number: 06-10725-LBR	
		E-Filed On 11/13/06	
<p>See Reverse for List of Debtors and Case Numbers.</p> <p>This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</p>		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court or BMC Group in this case. <input type="checkbox"/> Check box if this address differs from the address on the envelope sent to you by the court.	
Name of Creditor and Address: COPPER SAGE COMMERCIAL CENTER LLC Attn: Robert A. Russell P. O. Box 28216 Scottsdale, AZ 85255		DO NOT FILE THIS PROOF OF CLAIM FOR A SECURED INTEREST IN A BORROWER THAT IS NOT ONE OF THE DEBTORS. If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again. THIS SPACE IS FOR COURT USE ONLY	
Creditor Telephone Number: 480/505-4048 Last four digits of account or other number by which creditor identifies debtor: Copper Sage Commercial Center Phase II			
1. BASIS FOR CLAIM <input type="checkbox"/> Goods sold <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Services performed <input type="checkbox"/> Taxes <input type="checkbox"/> Money loaned <input checked="" type="checkbox"/> Other (describe briefly) Breach of Contract, Intentional Misrepresentation and other theories.		<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Unremitted principal <input type="checkbox"/> Wages, salaries, and compensation (fill out below) <input type="checkbox"/> Other claims against service (not for loan balances) Last four digits of your SS #: _____ * Inpaid compensation for services performed in _____ (date) _____ (date)	
2. DATE DEBT WAS INCURRED: April 2006		3. IF COURT JUDGMENT, DATE OBTAINED:	
4. CLASSIFICATION OF CLAIM. Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time case filed. See reverse side for important explanations.			
UNSECURED NONPRIORITY CLAIM \$3,500,000.00 <input checked="" type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or c) none or only part of your claim is filed to priority.			
5. SECURED PRIORITY CLAIM <input type="checkbox"/> Check this box if you have an unsecured claim, all or part of which is entitled to priority. Amount entitled to priority \$ _____ Specify the priority of the claim: _____			
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B) <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000)* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).			
SECURED CLAIM <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief description of collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of acreage and other charges at time case filed included in secured claim, if any: \$ _____			
<input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a) (_____). * Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.			
TOTAL AMOUNT OF CLAIM AT TIME CASE FILED: \$ 3,500,000.00 (unsecured)		\$ _____ (secured) \$ _____ (priority) \$ 3,500,000.00 (Total)	
<input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.			
CREDITS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.			
SUPPORTING DOCUMENTS: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.			
DATE-STAMPED COPY: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.			
The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is actually received on or before 5:00 pm, prevailing Pacific time, on November 13, 2006 for each person or entity (including individuals, partnerships, corporations, joint ventures, trusts and governmental units). BY MAIL TO: BMC Group 1 USACM Claims Docketing Center 1 Box 911 Segur, CA 90245-0911			THIS SPACE FOR COURT USE ONLY
BY HAND OR OVERNIGHT DELIVERY TO: BMC Group Attn: USACM Claims Docketing Center 1330 East Franklin Avenue El Segundo, CA 90245			
ATE 11/13/06	SIGN and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any) 		

See Reverse for List of Debtors and Case Numbers.

This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor and Address:

COPPER SAGE COMMERCIAL CENTER LLC
Attn: Robert A. Russell
P. O. Box 28216
Scottsdale, AZ 85255

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check box if you have never received any notices from the bankruptcy court or BMC Group in this case.

☐ Check box if this address differs from the address on the envelope sent to you by the court.

DO NOT FILE THIS PROOF OF CLAIM FOR A SECURED INTEREST IN A BORROWER THAT IS NOT ONE OF THE DEBTORS.

If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again.

THIS SPACE IS FOR COURT USE ONLY

Creditor Telephone Number 480, 505-4048

Last four digits of account or other number by which creditor identifies debtor:

Copper Sage Commercial Center Phase II

Check here ☐ replaces a previously filed claim dated: _____
if this claim ☐ or amends

1. BASIS FOR CLAIM

- ☐ Goods sold ☐ Personal injury/wrongful death
☐ Services performed ☐ Taxes
☐ Money loaned ☒ Other (describe briefly)
Breach of Contract

☐ Retiree benefits as defined in 11 U.S.C. § 1114(a)☐ Wages, salaries, and compensation (fill out below)

Last four digits of your SS # _____

Unpaid compensation for services performed from: _____ to _____

(date) (date)

☐ Unremitted principal
☐ Other claims against servicer (not for loan balances)**2. DATE DEBT WAS INCURRED: April 2006****3. IF COURT JUDGMENT, DATE OBTAINED:****4. CLASSIFICATION OF CLAIM.** Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time case filed.
See reverse side for important explanations.**UNSECURED NONPRIORITY CLAIM \$3,500,000.00**

☒ Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is filed to priority.

U. SECURED PRIORITY CLAIM

☐ Check this box if you have an unsecured claim, all or part of which is entitled to priority.

Amount entitled to priority \$ _____

Specify the priority of the claim:

- ☐ Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B)
☐ Wages, salaries, or commissions (up to \$10,000)*, earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).
☐ Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).

SECURED CLAIM

☐ Check this box if your claim is secured by collateral (including a right of setoff).

Brief description of collateral:

☐ Real Estate ☐ Motor Vehicle ☐ Other _____

Value of Collateral: \$ _____

Amount of an everage and other charges at time case filed included in secured claim, if any: \$ _____

☐ Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).☐ Other - Specify applicable paragraph of 11 U.S.C. § 507(a) (_____).

* Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

5. TOTAL AMOUNT OF CLAIM AT TIME CASE FILED: \$ 3,500,000.00 (unsecured) \$ (secured) \$ (priority) \$3,500,000.00 (Total)

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

6. CREDITS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

7. SUPPORTING DOCUMENTS: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

8. DATE-STAMPED COPY: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is actually received on or before 5:00 pm, prevailing Pacific time, on November 13, 2006 for each person or entity (including individuals, partnerships, corporations, joint ventures, trusts and governmental units).

BY MAIL TO:
BMC Group
USACM Claims Docketing Center
Box 911
Segundo, CA 90245-0911

BY HAND OR OVERNIGHT DELIVERY TO:
BMC Group
Attn: USACM Claims Docketing Center
1330 East Franklin Avenue
El Segundo, CA 90245

THIS SPACE FOR COURT USE ONLY

DATE

11/9/06

SIGN and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any).

Robert A. Russell

LIST OF EXHIBITS

Construction Loan Agreement dated March 1, 2006

Promissory Note dated March 1, 2006

Deed of Trust dated March 1, 2006